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# Supreme Court of the United States

**OCTOBER TERM, 1958**

## No. 656

THE CITY OF LOS ANGELES, A MUNICIPAL CORPORATION, THE CITY OF LONG BEACH, A MUNICIPAL CORPORATION, ROGER ARNEBERGH AND WAHLFRED JACOBSON,

*Appellants,*

*v.*

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, AND C. LYN FOX, PETER E. MITCHELL, MATTHEW J. DOOLEY, THEODORE H. JENNER AND EVERETT C. McKEAGE AS MEMBERS OF AND CONSTITUTING THE SAID PUBLIC UTILITIES COMMISSION,

*Appellees*

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA

## BRIEF AMICI CURIAE OF THE MEMBER MUNICIPALITIES OF THE NATIONAL INSTITUTE OF MUNICIPAL LAW OFFICERS

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February 20, 1959.

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IN THE

# Supreme Court of the United States

## OCTOBER TERM, 1958

## No. 656

THE CITY OF LOS ANGELES, a Municipal Corporation, THE CITY OF LONG BEACH, a Municipal Corporation, ROGER ARNEBERGH AND WAHLFRED JACOBSON,

*Appellants,*

*v.*

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, AND C. LYN FOX, PETER E. MITCHELL, MATTHEW J. DOOLEY, THEODORE H. JENNER AND EVERETT C. McKEAGE as members of and Constituting the said Public Utilities Commission,

*Appellees*

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA

# BRIEF AMICI CURIAE OF THE MEMBER MUNICIPALITIES OF THE NATIONAL INSTITUTE OF MUNICIPAL LAW OFFICERS

### Interest of Amici Curiae

The National Institute of Municipal Law Officers (NIMLO) is an organization of more than one thousand municipalities located in each of the 49 states, the District of

Columbia, and in the territories of Hawaii and Puerto Rico. Each member city acts through its chief legal officer, known variously as Corporation Counsel, City Attorney, City Solicitor, Director of Law, etc.

This Brief is filed pursuant to Rule 42(4) of this Court. The members of NIMLO are political subdivisions of states and this Brief is sponsored by their authorized law officers.

The principles involved in the case at bar vitally affect not only the City of Los Angeles and the City of Long Beach, but also all other municipalities and their residents in the United States. Should the action of the Public Utilities Commission of the State of California be upheld, then all regulatory commissions in the country might construe said action as a license to engage in *ex parte* grants of rate increases sought by utilities without hearing, notice or opportunity for participation, all to the great detriment of the consuming public. For this reason, the municipalities represented by NIMLO file this Brief with the Court in support of the Court's taking jurisdiction of the case and reversing the finding below.

## Summary of Argument

The grant to a regulated utility of an *ex parte* rate increase without notice, opportunity to be heard or opportunity afforded for cross examination to the consumers who are required to pay such increase does not comport with the requirements of due process as set forth in the Fourteenth Amendment.

If the procedure employed by the Commission in the instant case is permitted to stand, every commission and regulatory body in the United States will be granted carte blanche to grant increases in rates without affording due process to consumers. The result could be that millions

of dollars will be paid by consumers with the possibility of no refund being made by the company in the event that the commission or a court ultimately finds the increase granted to have unwarranted. This being the case, the question involved in the instant case has a vital effect upon every city and upon every public utility customer in the United States.

## ARGUMENT

### I. The Fourteenth Amendment Requires a Hearing Upon Proposed Rate Increases

As set forth by the City of Los Angeles and the City of Long Beach in the Jurisdictional Statement, the Public Utilities Commission of the State of California granted an interim rate increase on an *ex parte* basis to the regulated telephone utilities rendering service to those cities. This increase was in the amount of approximately $1,250,000 per month which amount was required to be paid by the subscribers in the cities. In total, $5,000,000 was paid by the subscribers, without any due process afforded said subscribers, since this interim *ex parte* increase was in effect for a period of four months.

This increase was granted in a purely arbitrary manner before there had been a full hearing. Further, and more importantly, there were no conditions attached by the Commission to the grant of this "interim" increase, and no requirements for a refund by the company to the consumers in the event the Commission should ultimately have found that the increase granted was not just and reasonable as a result of a failure by the Company to prove its need for an increase. This procedure certainly does not fall within the due process requirements of the Fourteenth Amendment.

It is an unassailable proposition of law that in utility

regulations a company is entitled to due process in a rate proceeding and that it must receive by means of rates all expenses incurred, a fair return upon the properties which have been devoted to the public interest and so forth.[1] Were the Commission to order a decrease in rates, *ex parte* on the motion of a consumer, there can be no doubt that such action would be completely devoid of due process—from the company standpoint. It is equally true, however, that the individuals who are to pay the rates are also entitled to due process. The rates ultimately shouldered by consumers cannot be arrived at by a commission on an *ex parte* basis, unsubstantiated by testimony which is subjected to cross examination. This Court has ruled over three decades ago that consumers are entitled to protection against rates being imposed upon them without due process of law. (See *Wichita Railroad & Light Co.* v. *Public Utilities Commission*, 260 U.S. 48). Therefore, the action of the Public Utilities Commission in granting an *ex parte* rate increase with no conditions for refunds in the event said increase should be ultimately denied is a patently incorrect procedure which requires this Court to take jurisdiction and reverse the finding below.

## II. The Issues Involved Herein Are of Tremendous National Import

Should the action of the California Commission not be reversed, the result will be to leave standing a precedent which could adversely affect every community and resident in the United States. With the exception of only a few, every state has utility regulation by either commissions or municipalities (in the case of home rule cities chartered under certain state statutes). If the procedure employed

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[1] *Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U. S. 591.

in the instant case should be employed in other jurisdictions, the millions of dollars which consumers might be required to pay, with no due process granted them whatever, is staggering. It strains the imagination to find a clearer example of deprivation of property without due process than the one involved herein. These residents and consumers, who must rely upon a regulated utility for heat, light, telephone service and so forth should not be placed at its mercy as a result of an *ex parte* proceeding wherein they are not afforded an opportunity for adequate representation in order to insure that any increase which is sought is a valid and deserved one. It would be an impossible task to attempt a calculation of the number of increases, sought throughout the country by utilities before every village, town, city or state regulatory body. Many are not even reported and the ones which are are numerous. Should due process be denied in these proceedings, chaos would certainly result. Thus, the import of this case is one which can have far-reaching and oppressive effects upon the consumers and residents of the entire nation.

The fact that the Commission ultimately validated the increase which was granted *ex parte* is of no moment to this proceeding. The question involved remains the same. Had the Commission found at a later date that all or any part of this increase should not have been granted the consumers would be left in the untenable position of either permitting the company to retain the monies which the consumers had been required to pay or in the burdensome position of instituting some action, court or othewise, requiring the company to disgorge these monies. Such action was not needed in this instance but the principle of an *ex parte* increase without due process remains—and said principle should not be permitted to stand. It is a principle which is alien to every concept of due process in our jurisprudence

and if not reversed, every consumer in the United States faces the possibility that the regulatory body in his state can with impunity grant an increase in rates to a utility, with no notice, no hearing, no presentation of testimony, no cross examination and with no regard whatever for the rights of consumers. Such a thing is not in keeping with the pronouncement of this Court in the *Wichita* case and must be struck down.

## Conclusion

The action of the Public Utilities Commission of California results in a deprivation of consumers properties without due process of law. The federal question is substantial and vitally affects every person in the entire United States. This Court should take jurisdiction and reverse the finding below.

Respectfully submitted,

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## Certificate of Service

We, Charles S. Rhyne and J. Parker Connor, attorneys for amici curiae, and members of the bar of the Supreme Court of the United States, do hereby certify that we have served upon the counsel of record for each other party, a copy of the foregoing brief amici curiae in support of the appeal from the Supreme Court of the State of California by depositing true and correct copies thereof in the United States mail, first class postage prepaid, on February 20, 1959 addressed as follows:

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